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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH SECTION 271
OF THE TELECOMMUNICATIONS
ACT OF 1996

) DOCKET NO. T-00000A-97-0238

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Arizona Corporation Commission

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**COVAD COMMUNICATIONS COMPANY'S REPLY BRIEF ON
INTERCONNECTION AND COLLOCATION IMPASSE ISSUES**

Covad Communications Company ("Covad") respectfully submits this Reply
Brief on Interconnection and Collocation Impasse Issues:

I. INTRODUCTION

Nowhere in its Legal Brief Regarding Disputed Workshop #2 Issues: Checklist Item 1 ("Qwest's Brief" or the "Brief") does Qwest seriously dispute the factual averments or legal arguments presented by Covad. Rather, Qwest attempts to divert this Commission's attention with legal verbiage and conclusory generalities regarding its purported compliance with Checklist Item 1. Qwest's transparent attempt to dodge the issues raised by Covad cannot mask the fact that Qwest has failed to satisfy its obligation both to provide "actual evidence demonstrating its present compliance with the statutory conditions for entry,"¹ and to "demonstrate that it has a concrete and specific legal

¹ Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, Mem. Op. and Order, CC Docket No. 99-295, FCC 99-404 (1999), ¶ 37 ("Bell Atlantic 271 Order").

obligation to”² provide collocation on “rates, terms and conditions that are just, reasonable, and non-discriminatory.”³

Qwest’s SGAT provisions relating to interconnection and collocation, as well as its present performance, plainly are insufficient to spur competitive entry into Arizona. Without competitive entry, Arizona citizens will be denied the key benefits of competitive choice—higher quality of service and lower prices. Accordingly, Covad respectfully urges this Commission to withhold § 271 approval until Qwest amends its SGAT and corrects the serious and on-going performance problems identified by Covad. Until such problems are completely and finally corrected, significant barriers to market entry by CLECs will continue to exist.

II. ARGUMENT

A. **Qwest Actively Stymies Competition in Arizona By Refusing To Permit CLEC’s To Virtually Collocate At Remote Terminals (SGAT §§ 8.1.1.8, 8.2.7.1, 8.2.7.2 & 8.4.6; AIL 1-68).**

Qwest opens the section of its Brief on collocation with the assertion that it is providing collocation space in sufficient amounts and on rates, terms and conditions that are just, reasonable, and non-discriminatory.⁴ Nothing could be further from the truth. In reality, Qwest’s refusal to permit CLECs to virtually collocate at remote terminals necessarily results in a sustainable and immutable competitive disadvantage to CLECs. Simply put, Qwest’s remote collocation position ensures nothing more than that Arizona residents will never be provided with meaningful competitive choices among local service providers.

² *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, Inter LATA Service in Louisiana*, Mem. Op. and Order, CC Docket No. 98-121, FCC 98-271 (1998), ¶54 (“*Second BellSouth Louisiana Order*”)

³ 47 U.S.C. § 251(c)(6).

⁴ See Brief at 25.

The entirety of Qwest's argument that it has provided remote collocation as required under the Telecommunications Act of 1996 (the "Act") turns on its alleged adherence to the FCC's admonishment that incumbent LECs allow CLEC collocation in the same area in which the LEC houses its own equipment.⁵ Qwest's argument, however, ignores the critical threshold issue that determines the scope of its collocation obligations under the Act; namely, whether remote virtual collocation is technically feasible.⁶

Here, Qwest failed to adduce any evidence that remote virtual collocation is not technically feasible and, in fact, conceded that there is no technical difference between physical and virtual collocation at a remote terminal.⁷ Moreover, because the State of Washington recently ordered Qwest to permit CLECs to virtually collocate at remote terminals,⁸ there exists the presumption, as a matter of law, that remote virtual collocation is technically feasible.⁹ Qwest thus must permit CLECs to virtually collocate at remote terminals.¹⁰

It is equally clear that Qwest may not hide behind the FCC's *Order on Reconsideration*¹¹ to avoid the provision of virtual remote collocation. The FCC's

⁵ *Id.* at 37.

⁶ See 47 U.S.C. § 251(c)(6); *Deployment of Wireline Services Offering Advanced Telecommunications Capabilities*, First Report and Order, CC Docket No. 98-147, FCC 99-48 (1999), ¶ 42 ("Collocation Order").

⁷ Brief at 38.

⁸ See *In the Matter of the Investigation Into U S WEST COMMUNICATIONS, INC.'s Compliance with Section 271 of the Telecommunications Act of 1996 and In the Matter of U S WEST COMMUNICATIONS, INC.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Washington Utilities and Transportation Commission Docket Nos. UT 3022 and 3040, Eleventh Supplemental Order; Initial Order Finding Noncompliance On Collocation Issues, ¶ 79, attached hereto as Exhibit A.

⁹ *Collocation Order*, ¶¶ 8, 45.

¹⁰ Qwest implicitly recognized its obligation to permit virtual remote collocation in SGAT § 8.1.1.1, which does not restrict virtual collocation to non-remote premises.

¹¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice Of Proposed Rulemaking In CC Docket No. 96-98. ("Order on Reconsideration").

collocation rules establish only a “floor” upon which a competitive local market may be based. The FCC specifically encouraged states to establish a “ceiling” to ensure the presence of meaningful competition in each state:

[s]tate commissions play a critical role in furthering the goals of our collocation rules by enacting rules of their own that, in conjunction with federal rules, ensure that collocation is available in a timely manner and on reasonable terms and conditions.¹²

The FCC’s request for comments on remote virtual collocation¹³ thus cannot alter the inescapable conclusion that this Commission has the authority, under the Act and FCC rules¹⁴, to require Qwest to permit remote virtual collocation.

More critically, the FCC also recognized, as Qwest refuses to do,¹⁵ that CLECs are not necessarily capable of physically collocating at remote terminals.¹⁶ As a consequence, this Commission must factor in the legally and factually undisputed inability of CLECs, such as Covad, to shoulder the burden imposed by Qwest’s requirement of remote physical collocation, when determining whether Qwest should permit remote virtual collocation.

Qwest has not once challenged the contention that Covad is financially incapable of physically collocating at a sufficient number of remote terminals to recapture its costs and to offer a viable competitive service.¹⁷ Nor has Qwest responded directly to the FCC’s independent conclusion that remote physical collocation of a DSLAM is an

¹² *Collocation Order*, ¶ 23.

¹³ *Order on Reconsideration*, ¶ 107.

¹⁴ *Collocation Order*, ¶ 23.

¹⁵ See Brief at 38.

¹⁶ *Deployment of Wireline Services Offering Advanced Telecommunication Capability, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98*, FCC 01-26 (2001), ¶¶ 12-13 (“*Line Sharing Reconsideration Order*”); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 96-98 (1999), ¶¶ 97, 361 (“*UNE Remand Order*”).

¹⁷ See Brief at 36-38.

inherently time consuming process.¹⁸ It is clear that the “option” for remote terminal collocation provided by Qwest is ephemeral at best. Thus, through SGAT §§ 8.1.1.8, 8.2.7.1m 8.2.7.2 and 8.4.6, Qwest effectively eliminates Covad as a competitor for end users served by remote terminals.

In accordance with the policies and principles described above, other state commissions, such as Washington State, have ordered that Qwest permit CLECs to virtually collocate at remote terminals. This Commission should follow Washington’s lead, and likewise require that Qwest amend its SGAT to explicitly permit remote virtual collocation in the State of Arizona.

B. Qwest May Not Properly Charge for Channel Regeneration (SGAT § 8.2.1.11, AIL 1-70).

Qwest claims entitlement to the recovery of a channel regeneration charge on the grounds that the *Local Competition Order* and the 8th Circuit’s decision in *Iowa Utilities Board v. FCC* authorize the recovery of costs incurred in provisioning collocation. Qwest’s recitation of authority, however, conveniently overlooks a 1997 FCC order, which makes clear that the FCC expects that cross-connection between incumbent LECs and CLECs should be provided so that regeneration is not required.¹⁹ Indeed, in the *Second Report and Order*, the FCC ordered incumbent LECs, like Qwest, to file tariff revisions reflecting cross-connection rates that exclude the cost of repeaters.²⁰ Thus, as the Washington Utilities Commission recently affirmed, the *Second Report and Order* conclusively requires that Qwest furnish at its own cost any regeneration required by interconnecting CLECs.²¹

¹⁸ *Line Sharing Reconsideration Order*, ¶ 13; *UNE Remand Order*, ¶ 361.

¹⁹ *In the Matter of Local Exchange Carriers’ Rates, Terms and Conditions for Expanded Interconnection*, Second Report and Order, CC Docket No. 93-162, FCC 97-208 (1997), ¶¶ 104-120 (“*Second Report and Order*”).

²⁰ *Id.*

²¹ See Exhibit 1, ¶ 92.

Qwest seeks to disregard the clear import of the *Second Report and Order*, arguing that regeneration is “necessary,” as contemplated by the United States Court of Appeals for the District of Columbia in *GTE Serv. Corp. v. FCC*, 205 F.3d 416, 423, 424 (D.C. Cir. 2000), and thus the cost of such regeneration should be born by the CLECs. As an initial matter, Qwest’s argument requires the assumption that Qwest will provision collocation in the most efficient manner possible. That assumption, however, is fatal to Qwest’s argument; CLECs are collocated at locations in Qwest COs that are not optimal or even the best available option when evaluated according to best engineering practices.²²

Qwest’s argument suffers more fundamentally because channel regeneration may never be deemed “necessary”, as a matter of law, because the FCC has made clear that “repeaters should not be needed” in the provision of collocation.²³ Qwest’s allegedly dispositive authority, therefore, is frankly inapposite to this issue. The SGAT must be amended to eliminate any channel regeneration charges.

C. Because Shared Cageless Collocation Results In The Most Efficient Use Of Space In An Incumbent’s Central Office, This Commission Should Require That Qwest Include Shared Cageless Collocation In Its Standard Collocation Offerings (SGAT § 8.1.1.4; AIL 1-67).

The efficient use of collocation space is the bellwether against which this Commission must measure Qwest’s collocation obligations.²⁴ Accordingly, incumbent LECs must include “shared cage[d] and cageless collocation arrangements [in their] physical collocation offerings.”²⁵ Because the FCC should be presumed to mean what it

²² See TR 1488, 18-19 (Wilson); TR 1489, 12-19 (Zulevic).

²³ *Second Report and Order*, ¶ 117; see also *id.*, ¶ 110.

²⁴ See 47 C.F.R. § 51.323(k)(2).

²⁵ *Application of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, FCC 00-238, ¶ 80 (“*Texas 271 Order*”).

says in its published orders, this Commission likewise should require that the SGAT be modified to include shared caged and shared cageless collocation arrangements.

Qwest's Brief inexplicably disregards the FCC's unambiguous statement and the result it dictates here. Qwest provides no explanation for its drastic departure from FCC precedent, but instead focuses on the cost it would sustain to provide shared cageless collocation. Because a consideration of cost is not a legally cognizable basis upon which to refuse to provide collocation,²⁶ Qwest must provide shared cageless collocation.

Shared cageless collocation provides a CLEC with the best method by which to conserve costs, deploy its network and make use of any available space in a Qwest central office.²⁷ A commission decision requiring Qwest to offer shared cageless collocation thus comports with the FCC's deferral of authority to the states to take all steps necessary to ensure that collocation is provisioned in a manner that ensures open and competitive local markets.²⁸ Conversely, a refusal to require shared cageless collocation falls afoul of the FCC's recognition that the most cost effective collocation arrangement is the arrangement most likely to provide competitive local service options to consumers.²⁹ This Commission therefore should require that the SGAT be amended to include shared cageless collocation in Qwest's collocation offerings.

²⁶ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (1996), ¶¶ 198, 199 ("the term 'technically feasible' refers solely to technical or operational concerns, rather than economic, space or site considerations The 1996 Telecommunications Act bars consideration of costs in determining technically feasible points of interconnection or access.") ("*Local Competition Order*").

²⁷ Covad Communications Company's Brief on Interconnection and Collocation Impasse Issues, Arizona Corporation Commission Docket No. T-00000A-97-0238, p. 5 and n.18.

²⁸ *Order on Reconsideration*, ¶ 10 ("Without viable collocation arrangements, the customer will not have a choice of LECs from which to purchase advanced services."); *Collocation Order*, ¶ 21.

²⁹ *Collocation Order*, ¶ 39.

D. Intervals for Unforecasted Collocation Space Not Requiring Infrastructure (SGAT § 8.4.2.4.3, 8.4.2.4.4, 8.4.3.4.3, 8.4.3.4.4, 8.4.4.4.3 & 8.4.4.4.4; AIL 1-75).

Covad refers the Commission to page 11 of its Brief on Interconnection and Collocation Impasse Issues for its opening and reply position on this issue.

E. Qwest's Blanket Prohibition on Acceptance of More than Five Collocation Applications Per CLEC Per Week is Contrary To The FCC's Order Regarding Collocation Applications (SGAT § 8.4.1.9; AIL 1-74).

The central premise underlying the FCC's sole exception to the requirement that incumbent LECs meet the national collocation standard intervals is two-fold: receipt of (1) an *extraordinary* number of (2) *complex* collocation applications.³⁰ Although Qwest contends, without basis,³¹ that it is subject to "huge" fluctuations in the number of collocation applications submitted, thereby imperiling its ability to meet the applicable interval, nowhere did Qwest provide any evidence regarding the complexity of the collocation applications submitted. Qwest thus has failed to establish that the second prong underlying the justification for a limitation on the number of weekly CLEC collocation applications exists here. Qwest therefore may not limit the number of collocation applications submitted by CLECs. This Commission should require that the SGAT be revised to eliminate SGAT § 8.4.1.9.

³⁰ Qwest's Brief, p. 50 and n. 124 (*citing* FCC 00-297, ¶ 24) (emphasis in Brief).

³¹ See Covad Communications Company's Brief on Interconnection and Collocation Impasses Issues, Colorado Public Utility Commission Docket No. 97I-198T p. 11 n.38 ("Note that Qwest's claim is exaggerated in this regard: 'if you take out two months that had large spikes, if you disregard those anomalies, their actual load, month to month, does have some variability, but it's not that great.'" TR 89, 19-22 (Wilson)).

F. The Option of Negotiating Additional Collocation Rights Is Not a Viable Alternative to an SGAT Documenting Qwest's Collocation Rights and Obligations.

The option to negotiate additional collocation rights is not, and was never intended to be, a panacea for Qwest's discriminatory collocation practices.³² To the contrary, the FCC previously rejected without caveat the argument that the ability to negotiate additional collocation rights and obligations was a viable alternative to the establishment of fixed standards evidencing an incumbent LEC's obligations under the Act.³³ This Commission thus may not abdicate its responsibility for resolving the disputed impasse issues and requiring appropriate amendment to the SGAT on the grounds that additional collocation rights and obligations may be negotiated privately between the parties.

III. CONCLUSION

As set forth above and in Covad Communication Company's Brief on Interconnection and Collocation Impasse Issues, Qwest has failed to demonstrate that it has opened up its local markets in Arizona to competitive entry. Such failure is fatal to Qwest's attempt to satisfy Checklist Item 1. This Commission thus should withhold Section 271 approval on this Checklist Item.

³² See Brief at 25 (a CLEC is "free" to "negotiat[e] independently with Qwest with respect to any terms included within [the SGAT] with which the CLEC disagrees.").

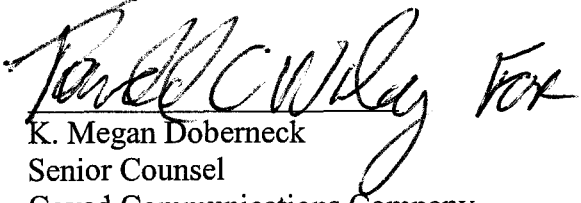
³³ *Collocation Order*, ¶ 40.

Dated: April 16, 2001.

Respectfully submitted,

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Nancy Mirabella

12263-0005/919258

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Investigation into)	
)	
U S WEST COMMUNICATIONS,)	DOCKET NO. UT-003022
INC.'s)	
)	
Compliance with Section 271 of the)	
Telecommunications Act of 1996)	
.....)	
)	DOCKET NO. UT-003040
In the Matter of)	
)	
U S WEST COMMUNICATIONS,)	ELEVENTH SUPPLEMENTAL
INC.'s)	ORDER; INITIAL ORDER
)	FINDING NONCOMPLIANCE
)	ON COLLOCATION ISSUES
Statement of Generally Available)	
Terms Pursuant to Section 252(f) of the)	
Telecommunications Act of 1996)	
.....)	

SYNOPSIS

- 1 This initial order recommends that the Commission find Qwest Corporation not in compliance with Checklist Item No. 1 (Collocation) of Section 271(c)(2)(B) of the 1996 Telecommunications Act, and further recommends that the Commission order Qwest to make certain modifications to Sections 4 (Definitions) and 8 (Collocation) of its SGAT.

INTRODUCTION

- 2 This is a consolidated proceeding to consider whether of Qwest Corporation (Qwest), formerly known as U S WEST Communications, Inc. (U S WEST),¹ complies with the requirements of Section 271 of the Telecommunications Act of 1996 (the Act).² This proceeding also addresses the Washington Utilities and Transportation Commission's (Commission) review and approval of Qwest's Statement of Generally Available Terms (SGAT) under Section 252(f)(2) of the Act.

¹ Early in this proceeding U S WEST completed its merger with Qwest. The names U S WEST and Qwest are used interchangeably in this document.

² Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§151 *et seq.*

3 This initial order serves as the report of the Commission Staff addressing the results of the second workshop in this proceeding, makes recommendations to the Commission concerning Qwest's compliance with Checklist Item No. 1 (Collocation) under Section 271, and makes recommendations concerning certain portions of Qwest's proposed SGAT. Qwest's compliance with the other checklist items discussed in the second workshop were addressed in an initial order entered on February 23, 2001.

Section 271 Process

4 Under Section 271 of the Act, Regional Bell Operating Companies (RBOCs or BOCs), may only provide toll service between local area transport areas (LATAs) if the RBOCs can demonstrate that certain competitive conditions exist in their local markets. The Federal Communications Commission (FCC), after consultation with the United States Department of Justice (DOJ) and state commissions, may authorize an RBOC to provide interLATA service in a particular state if the RBOC meets the conditions, including competitive checklist items, set forth in Section 271(c) of the Act. In particular, the FCC must consult with state commissions "in order to verify the compliance of the [RBOC] with" the requirements of Section 271(c). 47 U.S.C. § 271(d)(2)(B).

5 Qwest is the RBOC that provides local exchange and intraLATA toll service to much of Washington state. In advance of Qwest filing an application with the FCC to enter the interLATA market, the Commission in October 1997 issued an Interpretive and Policy Statement on the Process for RBOC Application under Section 271 of the 1996 Telecommunications Act, in Docket No. UT-970300 (Interpretive and Policy Statement).

6 In March 2000, the Commission issued a Supplemental Interpretive and Policy Statement on Process and Evidentiary Requirements, in Docket No. UT-970300 (Supplemental Interpretive and Policy Statement). The Supplemental Interpretive and Policy Statement adopted a process and standards for facilitating the Commission's review of Qwest's compliance with Section 271(c) of the Act. The Commission established a series of three adjudicative workshops, with an additional workshop if necessary, designed to allow the Commission and interested parties to review and comment on Qwest's compliance with Section 271(c).

7 In the Interpretive and Policy Statement, the Commission directed Qwest, Staff, Public Counsel and other interested persons to develop the evidentiary requirements for Qwest's compliance with Section 271. These parties presented to the Commission a draft statement of evidentiary requirements, which the Commission adopted in its Supplemental Interpretive and Policy Statement. Appendix A to the Supplemental Interpretive and Policy Statement identifies certain general and specific evidentiary requirements that Qwest must meet to demonstrate its compliance with

each checklist item, as well as items of public interest. Appendix B to the Supplemental Interpretive and Policy Statement establishes similar evidentiary requirements for Competitive Local Exchange Carriers (CLECs). Information provided by Qwest and the CLECs will allow the Commission to better evaluate Qwest's compliance with the requirements of Section 271.

- 8 The schedule has been modified with the consent of all parties to include a fourth workshop in July 2001, and the Commission recognizes the probability of holding a fifth workshop.³ These modifications were necessary to accommodate requests by Qwest and other parties to address certain checklist items in later workshops. In addition, the third party testing and audit of Qwest's performance data sponsored by the Regional Oversight Committee (ROC) may not be available for review until late spring 2001, at the earliest.

The SGAT Process

- 9 Under Section 252(f)(1) of the Act, an RBOC may submit to a "State commission a statement of terms and conditions that such company generally offers within that State to comply with the requirements of Section 251 and the regulations thereunder and the standards applicable under this section." Section 252(f)(2) of the Act provides that:

A State commission may not approve such statement unless such statement complies with section (d) of this section and section 251 and the regulations thereunder. Except as provided in section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

- 10 On March 22, 2000, Qwest filed its proposed SGAT in the Section 271 proceeding, Docket No. UT-003022, and requested Commission approval of the SGAT. By letter dated April 14, 2000, the Commission rejected Qwest's request to review the SGAT within the Section 271 proceeding. On April 28, 2000, Qwest refiled its SGAT with the Commission in a new docket, Docket No. UT-003040, requesting Commission

³ *In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996; In the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Dockets No. UT-003022 and UT-003040, Fifth Supplemental Order; Prehearing Conference Order, ¶¶ 17-18 (Oct. 25, 2000) (*Fifth Supplemental Order*); see also *In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996; In the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Dockets No. UT-003022 and UT-003040, Sixth Supplemental Order; Prehearing Conference Order; Notice of Prehearing Conference (Dec. 6, 2000) (*Sixth Supplemental Order*).

approval. On May 19, 2000, the Commission held a workshop for interested persons to discuss the process by which the Commission would review Qwest's proposed SGAT. Following the workshop, the Commission entered an order consolidating its review of the SGAT and Section 271 proceedings. At its June 16, 2000 open meeting, the Commission allowed Qwest's proposed SGAT to go into effect, and stated that it would further review the SGAT provisions in Docket No. UT-003040.

- 11 The Interpretive and Policy Statement identified that "the statement of generally available terms option that is set out in Section 271(c)(1)(B) of the Act is not available to [U S WEST] in Washington, consistent with the purposes of the Act and the provisions of Section 271(c)(1)(B)." *Interpretive and Policy Statement, at 5*. In the Supplemental Interpretive and Policy Statement, the Commission clarified that

The existing interconnection agreements between U S WEST and its competitors will form the basis for U S WEST's legal obligations concerning terms and conditions of service. The Commission will consider an SGAT or similar mechanism if the consideration is limited to elements or services that are not provided for in an interconnection agreement.

Supplemental Interpretive and Policy Statement, at 2.

- 12 During the first workshop session, Qwest and participating CLECs argued that the Commission should consider Qwest's SGAT for the purpose of determining Qwest's compliance with Section 271, as well as for Commission review and approval under Section 252(f). While Qwest and the CLECs are correct that the SGAT is a vehicle to document Qwest's obligations under the Act by incorporating more current industry practices and FCC determinations, Qwest's history and current practices in providing interconnection under its existing interconnection agreements should not be ignored. The SGAT alone cannot demonstrate compliance. The SGAT provides a promise by Qwest for future untested practices.⁴ As noted in the Revised Draft Initial Order for the first workshop, the parties should continue to address SGAT issues in workshops to evaluate Qwest's proposal under Section 252(f). This process is an efficient way to develop consensus on SGAT provisions. However, the parties should also address CLEC and Qwest experience and practice under existing interconnection agreements for demonstration of Qwest's compliance with Section 271.

- 13 Consistent with the Commission's directions in the Supplemental Interpretive and Policy Statement, for purposes of determining Qwest's compliance with Section 271(c), the Commission will consider Qwest's proposed SGAT for the purpose of

⁴ While a few CLECs are already executing the SGAT for interconnection in Washington, there is very little history of experience under the SGAT.

considering elements of services not provided in interconnection agreements, and may consider whether SGAT language will affect Qwest's compliance with checklist items or other requirements under Section 271(c)(1)(B). The Commission will also evaluate the terms of the SGAT independently from Qwest's compliance with checklist items under Section 271. The Commission will evaluate the SGAT to ensure that it does not violate law or Commission policy even though there are interconnection agreements and the SGAT is not the controlling document for all companies.

The Second Workshop and Collocation Issues

- 14 The Commission held its second workshop in this proceeding on November 6-8, and 10, 2000, addressing the issues of Checklist Items No. 1 (Interconnection and Collocation), 11 (Number Portability), and 14 (Resale), and provisions of the SGAT addressing these issues. The Commission held an additional workshop on collocation issues on November 28 and 29, 2000, and a follow-up workshop on January 3-5, 2001, to address unresolved issues from the November workshop sessions.
- 15 Representatives from Qwest, AT&T Communications of the Pacific Northwest, Inc. and TCG Seattle (collectively AT&T), WorldCom, Inc. (WorldCom), Sprint Communications Company, LP (Sprint), XO Washington, Inc. (XO Washington), f/k/a NEXTLINK Washington, Inc. (NEXTLINK), Electric Lightwave Inc. (ELI), Advanced TelCom Group, Inc. (ATG), Focal Communications Corporation (Focal), The Association of Local Telecommunications Services, Global Crossing Telemanagement, Global Crossing Local Services, New Edge Networks, North Point Communications, Allegiance Telecom of Washington, Inc. (Allegiance), McLeod USA Telecommunications Services, Inc. (McLeod), TRACER, Teligent Services, Inc. (Teligent), Rhythms Links Inc., Broadband Office Communications, Inc., Covad Communications, Inc. (COVAD), ICG Communications, Inc. (ICG), MetroNet Services Corporation (MetroNet), MGC Communications, Inc., d/b/a Mpower Communications Corp. (Mpower), Yipes Transmission, Inc. (Yipes), and Public Counsel participated in the workshop sessions.
- 16 During the January 2001, follow-up workshop sessions, the parties requested additional time to address collocation issues in Checklist Item No. 1. The parties were scheduled to discuss collocation issues in workshops in other states during January, and hoped to resolve additional issues. The parties filed briefs on the issues of Checklist Items No. 1 (Interconnection), 11 (Number Portability), and 14 (Resale) on January 25, 2001, and an initial order finding noncompliance with these issues was entered on February 23, 2001. The parties filed briefs with the Commission on collocation issues on February 16, 2001.

- 17 The parties may file comments with the Commission on or before April 20, 2001, concerning the initial order entered on February 23, 2001, and on or before April 20, 2001, concerning this supplemental initial order on collocation issues.⁵ The Commission will schedule a date for oral argument on these issues.

MEMORANDUM

CHECKLIST ITEM NO. 1 - COLLOCATION

FCC and Washington State Requirements

- 18 Under Section 271(c)(2)(B)(i) of the Act, BOCs are required to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." Competing carriers may choose any method of technically feasible interconnection at a particular point on the incumbent LEC's network.⁶ Technically feasible methods include, but are not limited to, physical and virtual collocation and meet point arrangements.⁷ In the *Advanced Services First Report and Order*, the FCC revised its collocation rules to require incumbent LECs to include shared cage and cageless collocation arrangements as part of their physical collocation offerings.⁸ The provision of collocation is an essential prerequisite to demonstrating compliance with Item 1 of the competitive checklist.⁹ To show compliance with its collocation obligations, a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are "just, reasonable, and nondiscriminatory" in accordance with Section 251(c)(6) and the FCC's implementing rules.¹⁰

⁵ See, *Notice of Extension of Time to File Comments*, March 23, 2001.

⁶ *Local Competition First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd at 15779 (1996) *Local Competition First Report and Order*, aff'd in part and vacated in part sub nom, *Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997). *Second BellSouth Louisiana Order, Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, Inter-LATA Service in Louisiana*, Memorandum Opinion and Order, CC Docket No. 98-121, 13 FCC Rcd 20640-41, (released October 13, 1998).

⁷ 47 C.F.R. §51.321(b); *Local Competition First Report and Order*, 11 FCC Rcd at 15779-82; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41

⁸ *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, First Report and Order and Further Notice of Proposed Rulemaking, (released March 31, 1999). Rcd at ¶¶ 41-42.

⁹ 47 U.S.C. § 251(c)(6) (requiring incumbent LECs to provide physical collocation); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41.

¹⁰ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41.

19 In its *Order on Reconsideration* in CC Docket No. 98-147, the FCC imposed further collocation requirements pertaining to intervals, requiring that, absent state standards or agreements between the LEC and connecting carriers, an incumbent LEC must provide physical collocation no later than 90 calendar days after receiving a collocation application.¹¹ The FCC clarified that an incumbent LEC must allow a competitive LEC to construct a controlled environmental vault or similar structure on land adjacent to an incumbent LEC structure that lacks physical collocation space. *Id.* It declined to adopt specific limitations on the reservation of collocation space by incumbent and competitive LECs, but urged states to adopt space reservation policies that promote competition. *Id.* The FCC clarified that the collocation rules set forth in the Order were minimum standards and that states may adopt additional requirements, including shorter provisioning intervals. *Id.*

20 The Commission has issued collocation rules for the state of Washington, which rules became effective on January 5, 2001.¹² The Commission's rules establish provisioning intervals for collocation, including a 45-day construction deadline in the event the collocation space was included in a CLEC forecast submitted at least three months in advance of the order. In the event forecasts are not submitted, the Commission declines to adopt standards and the national standards apply. The rules also call for the ILEC to credit the CLEC one-tenth of the nonrecurring charge for every week past the due date in the event the collocation space is not delivered by the due date.

Parties' Positions

Qwest

21 Qwest presented witness Thomas R. Freeberg in support of its testimony on collocation issues. Qwest witness Margaret Bumgarner subsequently adopted Mr. Freeberg's testimony and prepared rebuttal testimony. In its testimony, Qwest asserts that it provides physical and virtual collocation to 26 CLECs in 67 of its central office buildings. *Ex. 331, at 30.* Qwest states that 92 percent of its retail lines in Washington are served from those 67 buildings, and that 76 percent of Qwest retail customers are served from buildings that house three or more collocators' equipment. *Id.*

¹¹ *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, ¶ 5 (rel. August 10, 2000) (Collocation Order on Reconsideration); see also 47 C.F.R. §51.5.*

¹² See WUTC Collocation Rules Docket No. UT-990582, *In the Matter of Adopting WAC 480-120-560 Relating to Telephone Companies-Collocation*, General Order No. R-475, Order Adopting Rules Permanently (filed with the Code Reviser on November 30, 2000, effective January 5, 2001).

22 Qwest states that its legal obligation to provide collocation is established through its interconnection agreements and through the provisions of its SGAT. *Id. at 36.* Qwest explains that it offers collocation consistent with the FCC's collocation rules and the D.C. Circuit Court of Appeals' decision interpreting the FCC's collocation rules. *Id. at 34, 35.* Qwest describes the process it uses to provide collocation to CLECs, and asserts that it provides CLECs with the same network connections as Qwest uses to provision retail customers. *Id. at 39, 40-42.* Qwest states that it has developed performance measures for collocation which gauge its performance for each of the three steps in the collocation process. It explains that there is no retail parity standard for collocation, but that the ROC has developed performance benchmarks that establish a level of performance that provides CLECs a meaningful opportunity to compete. *Id. at 43.*

AT&T

23 AT&T analyzes Qwest's SGAT, Qwest's implementation of the collocation provisions in its SGAT and interconnection agreements, Qwest's statements of compliance with Section 271 checklist obligations, and AT&T's actual commercial experience with Qwest's provisioning of collocation. *Ex. 371, at 3-4 (Affidavit of Kenneth L. Wilson).* AT&T argues that Qwest is not in compliance with its obligations under Section 271(c)(2)(B)(i) to provide a process and procedure for collocation that is just, reasonable, and nondiscriminatory. *Id. at 4.*

24 AT&T objects to SGAT language and Qwest practices in limiting collocation to wire centers. *Id. at 85.* AT&T argues that the definitions of "collocation" and "premises" in the SGAT limit the premises on which CLECs may collocate equipment to Qwest wire centers, contrary to FCC rules and orders. *Id. at 58-59.* Similarly, AT&T argues that throughout Section 8 of the SGAT, Qwest should replace the term "wire center" with "premises" when the term is used to indicate where a CLEC may collocate. *Id. at 60-61, 62, 68-69, 73, 74, 79, 80, 81, 83.*

25 AT&T argues that the SGAT section describing shared physical collocation must allow for subleasing of space by one CLEC from another CLEC. *Id. at 61-62.* AT&T argues that Qwest must modify SGAT sections addressing adjacent collocation to follow FCC rules, and to provide terms and conditions instead of providing adjacent collocation on an individual case basis. *Id. at 62-64.*

26 AT&T objects to SGAT language and Qwest practices concerning collocation of equipment, particularly Remote Switching Units (RSUs). *Id. at 64-67, 84-85.* AT&T argues that SGAT section 8.2.1.2 impermissibly limits the equipment that CLECs may collocate on Qwest premises. *Id. at 64-67.* AT&T argues that despite Qwest's reliance on a decision of the U.S. Court of Appeals for the D.C. Circuit in *GTE Services Corp. v. FCC*, 205 F.3d 416, 422 (D.C. Cir. 2000) to support its position, the

FCC is still reviewing the issue, and that the U.S. Court of Appeals for the Ninth Circuit has determined that state commissions may require the collocation of RSUs. *Id.* (citing *MCI Corp. v. U S WEST Comm. Inc.*, 204 F.3d 1262 (9th Cir. 2000)). AT&T further argues that collocation of RSUs is necessary in certain circumstances to avoid inefficient construction of facilities and expense. *Id.* at 66.

- 27 AT&T argues that various sections of the SGAT must be modified to require Qwest to comply with the Act and FCC rules, specifically those sections relating to provisioning intervals, available and exhausted space, virtual collocation. *See Id.* at 64, 68-70, 74, 80, 83. Further, AT&T notes that SGAT section 8.2.1.1.3 refers to Qwest's web site listing Qwest premises where collocation space is full. In its experience, AT&T has found the web site to list only wire centers, not all of Qwest's premises that are available for collocation. *Id.* at 70.
- 28 AT&T argues that Qwest should modify the SGAT to allow for direct connections to Qwest equipment though cross-connects without intermediate frames. *Id.* at 67, 73, 81. AT&T's investigation reveals interconnection trunks, UNEs and other services running though intermediate frames despite Qwest claims to the contrary. *Id.* at 85. AT&T asserts that Qwest should include the relevant portions of technical publications in the SGAT rather than simply refer to the publications. *Id.* at 67-68, 75, 77-78. AT&T argues that SGAT sections imposing safety requirements for CLEC equipment and installations should provide the same standards Qwest requires of its own equipment and installations. *Id.* at 71, 75, 76-77. AT&T raises concerns over SGAT sections addressing consequences for CLEC violations of Qwest rules, including proper installation of equipment. *Id.* at 71-72, 77.
- 29 AT&T argues that SGAT sections addressing the CLEC's right to subcontract for physical collocation should include the right to convert from virtual to cageless collocation. *Id.* at 73-74. AT&T objects to a space usage requirement imposed by Qwest, and a requirement that CLECs own equipment collocated in Qwest premises. *Id.* at 75-76. Further, AT&T objects to Qwest's requirement that CLECs use a nine square foot space at a minimum, and argue that Qwest must make its space reclamation policy available for review. *Id.* at 78-79. AT&T suggests that Qwest allow CLECs early access to collocation space so that CLECs may install equipment before Qwest finishes work on the space. *Id.* at 76.
- 30 AT&T also argues that the SGAT does not allow for the new "express connect" option, nor adequately address the Express Fiber Entrance Facility. *Id.* at 79-81. AT&T objects to ordering requirements and intervals, particularly for virtual collocation. *Id.* at 82-83. Finally, AT&T objects to SGAT language addressing responsibility for repair and maintenance of equipment. *Id.* at 83-84.

WorldCom

- 31 WorldCom raises both general and specific concerns with Qwest's provisioning of collocation. *Ex. 391 (Direct Testimony of Thomas T. Priday)*.¹³
- 32 WorldCom has experienced operational difficulties with Qwest's collocation provisioning in several states. WorldCom argues that cageless collocation can often be the most efficient use of limited collocation space available to CLECs. WorldCom further argues that Qwest's failure to provision cageless collocation in an efficient and timely fashion raises questions about Qwest's willingness to meet collocation requirements. *Id. at 17-18*. WorldCom reports that Qwest has chosen to interpret FCC orders to re-define Qwest's responsibilities in providing interconnection and collocation, even when a CLEC has a specific agreement in place. *Id. at 18*. WorldCom suggests that the relief granted through reconsideration of the FCC's order is only interim and that Qwest should only re-visit issues when a final interpretation has been issued or by mutual agreement of the parties. *Id. at 19*.
- 33 WorldCom suggests a number of specific modifications to section 8.0 of Qwest's SGAT. WorldCom requests that Qwest rewrite section 8.2.1.2 of the SGAT to allow for collocation of ATMs and packet switches. *Id.* WorldCom asks that collocation bays of less than 9 square feet be permitted. *Id. at 21*. WorldCom seeks to clarify that it is Qwest's responsibility to provide all aspects of collocation on rates, terms and conditions that are just, reasonable and nondiscriminatory, not just in terms of technical and performance standards. *Id. at 22*.
- 34 WorldCom requests that the language referencing UNEs and ancillary access be clarified and that references to Interconnection Distribution Frames be struck. *Id. at 23*. WorldCom requests that references to Network Equipment Building Standards (NEBS), should be changed throughout Section 8 to reference only NEBS Level 1 standards. *Id.*
- 35 WorldCom requests that language be clarified to reflect the FCC's requirement that Qwest provide a report to a requesting CLEC within 10 days. *Id. at 24*. WorldCom requests clarification that CLEC requests for additional space where a CLEC has already collocated should be provided in adjoining space, or if such space is unavailable, provided through Qwest interconnection facilities in a non-adjoining CLEC collocation space. *Id. at 25*. WorldCom requests that the SGAT be modified to reflect FCC requirements that Qwest provide access to parking facilities at the Qwest premises where the CLEC is collocated. *Id.*
- 36 WorldCom requests that Qwest allow for interconnection not only to Qwest and other CLECs, but also to any dedicated interoffice transport facilities, to any end user's

¹³ WorldCom witness Dayna D. Garvin adopted Mr. Priday's testimony. *See Ex. 392*.

premise, to any other collocating carrier, to the CLEC's own collocations and between collocations of a CLEC's affiliates on the same premises. *Id. at 26.*

WorldCom proposes language to clarify that the use of a Bona Fide Request Process should not apply to converting alternative collocation to physical collocation in cases where the CLEC was forced to use alternative collocation due to space constraints and where Qwest subsequently discovers or creates alternative space. *Id. at 27.*

37 WorldCom requests that SGAT language be clarified to establish a reasonable basis for assessing maintenance charges. *Id. at 28.* WorldCom asks that language restricting how CLECs use leased collocation space be eliminated. *Id. at 29.* WorldCom requests the section be modified to allow CLECs to use a vendor of their choosing to construct caged enclosures. *Id. at 31.* WorldCom requests that reference to minimum square footage requirements should be revised to reflect the minimum space required to house a single rack or bay. *Id.* WorldCom suggests modifying the language to provide for dual entry into Qwest's premises where a CLEC requests dual entry for collocation. *Id. at 32.*

38 WorldCom requests that requirements for video cameras or other security devices be mutually agreed upon rather than included as a term of the SGAT. *Id. at 33.* WorldCom suggests several changes to SGAT sections concerning space construction and site preparation. WorldCom requests that, in the case of shared collocation, Qwest may not increase the cost of site preparation or nonrecurring charges above the TELRIC cost for provisioning such a cage and Qwest must prorate the charge for site conditioning and preparation by allocating the charge to the CLEC based on the percentage of total space used by the CLEC. *Id. at 34.*

39 Finally, WorldCom proposes language for establishing provisioning intervals. *Id. at 35-36.* WorldCom proposes clarifying language that any limit on the number of collocation orders per week by a CLEC apply on a state by state basis and not apply across all states in which the CLEC is ordering collocation from Qwest. *Id. at 36.*

XO Washington

40 XO Washington raises four concerns about Qwest's provisioning of collocation. *Ex. 325 at 10-14 (Responsive Testimony of Kaylene Anderson).* These concerns focus on (1) collocation pricing; (2) lack of facilities provided for collocation; (3) refusal to permit collocating CLECs to run cross-connects between their collocated equipment, and (4) issues of collocation at remote terminals, controlled environmental vaults, and cabinets located where fiber feeder and copper distribution facilities connect to serve distribution areas in the network. *Id. at 10.* XO Washington argues that Qwest has failed to satisfy its obligations under Checklist Item No. 1 concerning collocation issues due to Qwest's inadequate performance on these collocation issues. *Id. at 2.*

- 41 With respect to collocation pricing, XO Washington objects to Qwest's charges for collocation, suggesting that collocation pricing should be based on forward-looking, or TELRIC, prices for all collocation elements. Further, XO Washington asserts that until Qwest has complied with the pricing issues to be determined in Commission Docket No. UT-003013, Qwest will not comply with this checklist item. *Id. at 10.*
- 42 XO Washington reports that it has faced repeated delays in Qwest's collocation provisioning because of a lack of available facilities, particularly for DC power. *Id. at 10.* XO Washington suggests the lack of facilities is due to Qwest's failure to plan for CLEC facility needs. *Id. at 11.*
- 43 XO Washington objects to Qwest's recent practice of not permitting CLECs that collocate in a Qwest central office to cross-connect their collocation facilities. *Id. at 12.* XO Washington argues that CLEC-to-CLEC cross-connections permit CLECs to interconnect their networks efficiently and to access facilities and services provided by CLECs without constructing costly outside plant. *Id. at 13.*
- 44 Finally, XO Washington argues that Qwest's SGAT contains no provision that explicitly allows CLECs to collocate equipment on remote premises to access loops. XO Washington argues that this form of collocation within carrier distribution areas is critical both to making advanced services more available and maximizing bandwidth. *Id. at 14.*

Covad

- 45 Covad raises numerous issues regarding Qwest's collocation proposals. *See Ex. 395 (Direct testimony of Michael Zulevic).* First, Covad requires collocation of ATM equipment in Qwest central offices in order to efficiently implement services such as xDSL. The inability to collocate ATM equipment would seriously affect Covad's ability to offer services across a geographic area without excessive cost and additional work that would be prohibitive to offering competitive services. Covad requests that Qwest clearly state in its SGAT that ATM collocation is allowed to ensure that policies are not be subject to interpretation or change. *Id. at 2-3.*
- 46 Covad argues that Qwest must make allowances for situations where adjacent collocation spaces cannot be provided. Covad notes the example of network management circuits that must be duplicated for non-adjacent spaces, which process adds additional cost for Covad. *Id. at 4-5.*
- 47 Covad requests a means to reach Qwest personnel twenty-four hours a day, seven day a week, preferably by 800 number, in order to resolve access issues in real time. Currently, Covad must leave messages on a recorder, and responses may take several hours or days. Covad notes that Bell South offers such services, and expects Qwest

to offer a similar level of service to prevent discriminatory treatment of CLECs. *Id.* at 5-6.

- 48 Covad requests access to collocation spaces before completion, to be available at reasonable terms. Qwest does not currently allow access until 100% of non-recurring charges are paid, and the CLEC agrees to start paying recurring charges. *Id.* at 6.
- 49 Covad requests Qwest better define the terms used in collocation, particularly the types of collocation and where each may be provided. FCC rules require Qwest to provide collocation at each technically feasible point in its network. Covad argues that the SGAT must clearly indicate that all types of collocation are available in all physical locations, in order to meet the standard of technical feasibility. *Id.* at 6-7.
- 50 Covad asserts that Qwest must allow sharing of collocation spaces, and must expand sharing arrangements to cageless and virtual arrangements in addition to being available in physical collocation arrangements. *Id.* at 7. Covad argues that Qwest delays in removing obsolete and unused equipment from its premises should not relieve Qwest from meeting its collocation provisioning intervals. *Id.* at 8. Covad asserts that telephone service to collocation spaces should be incorporated into the collocation application process rather than remaining in the "business service provisioning process" discussed in section 8.2.3.11 of the SGAT. *Id.* at 8-9.
- 51 Covad expresses concern that Qwest may require forecast information before providing collocation spaces. Covad argues that through these forecast requirements, Qwest will attempt to circumvent its obligation to provide collocation within the FCC specified 90-day interval. *Id.* at 9-10. Covad argues that limiting the number of collocation orders to five per week circumvents the FCC's requirements that ILECs provide collocation within 90 days. *Id.* at 10.
- 52 Covad expresses concern that Qwest's "first-come-first-served" rule for provisioning collocation within a "no space" central office may not award space in a fair manner. Covad requests that Qwest maintain a waiting list in such offices, so that space can be provided when it becomes available. Covad also requests that this provision apply retroactively to CLECs who have interconnection agreements with Qwest. *Id.* at 10-11.
- 53 Like AT&T, Covad objects to language in Qwest's SGAT that refers to collocation at a "U S West Wire Center." Covad requests that the process be expanded to include any premises where collocation is requested by a CLEC. *Id.* at 11.
- 54 Covad asserts that collocation intervals should revert back to the normal interval that would have been appropriate if space is found to exist during a tour. *Id.* Covad requests that power and transport availability limitations be posted on Qwest's

website, so that Covad can make informed business decisions as to where to seek interconnection. *Id. at 11-12.*

55 Covad requests that Qwest accept minor corrections and changes in collocation requests, without requiring CLECs to submit an additional Collocation Order Form and Quote Preparation Fee. *Id. at 13.* Covad requests that Qwest adopt a formal space acceptance process, and verify completion of all aspects of the collocation before the Acceptance Meeting. *Id. at 14-15.* Covad requests that Qwest provide efficient space for Covad's collocations, as specified in SGAT section 8.2.3.4, and in instances where physical limitations make that impossible, Qwest should only be allowed to charge costs that would have been appropriate in an efficient arrangement. *Id. at 15-16.*

56 Covad requests that DS1 terminations be provided individually rather than in increments of 28, as specified in SGAT section 8.3.1.11 (B). Covad argues that this language is financially discriminatory, and that CLECs rarely require more than one DS1. *Id. at 16-17.* Finally, Covad asserts that channel regeneration charges should only be assessed when the CLEC makes a conscious design decision that requires them. *Id. at 17-18.*

Qwest's Response

57 Through rebuttal testimony, Qwest adopts the suggestions of intervenors regarding certain revisions to SGAT sections. *Ex. 294, at 2 (Rebuttal Testimony of Margaret Bumgarner).* Qwest states that, in response to the FCC's Order on Reconsideration regarding collocation rules, Qwest is proposing new overall feasibility, quote, and provisioning intervals to comply with the FCC's order, as well as a new collocation space forecasting and reservation process. *Id.* Qwest also provided a revised SGAT section 8 including revisions based upon the FCC's order and to reflect agreements reached in other states workshops on collocation. *See Ex. 295, at 9-51.*

58 In rebuttal, Qwest asserts that it addressed some of the concerns raised by the intervenors by proposing modifications to the SGAT. *Ex. 294, at 11-82.* Qwest proposed SGAT revisions to address concerns regarding the term "premises (*Id. at 11*);" the subleasing of space by CLECs (*Id. at 15*); provisioning intervals (*Id. at 22-25*); available and exhausted space (*Id. at 22-25*); minimum square footage (*Id. at 15*); conversion from virtual collocation to cageless physical collocation (*Id. at 34*); terms and conditions for adjacent collocation (*Id. at 16*); direct connections to Qwest equipment (*Id. at 57*); technical publications references (*Id. at 21*); parity of safety standards for CLEC equipment and installations with those of Qwest (*Id. at 41*); consequences to CLECs for violation of Qwest rules (*Id. at 42*); early access to collocation space (*Id. at 40*); Express Fiber Entrance Facility (*Id. at 46*); terms and conditions for remote collocation (*Id. at 51*); and responsibility for repair and maintenance of equipment (*Id. at 82*).

59 Qwest did not agree to change its SGAT to address the following issues raised by intervenors: collocation of remote switching units (*Id. at 18*); listing on the website of non-wire center collocation spaces when full (*Id. at 24*); space reclamation intervals (*Id. at 28*); establishing specific intervals for adjacent collocation (*Id. at 16*); security arrangements for CLEC personnel (*Id. at 30*); performing conversions at no charge (*Id. at 34-35*); recovery of training costs (*Id. at 37*); channel regeneration charges (*Id. at 55*); ordering intervals for virtual collocation (*Id. at 63*); ordering limitations (*Id. at 67*); fines and penalties related to noncompliance with ordering intervals (*Id. at 71*); adjacent collocation ordering (*Id. at 77*); and prohibition of submitting service requests prior to completion and payment for collocation construction charges (*Id. at 80*).

Impasse Issues

60 During the workshops and follow-up workshops, Commission Staff prepared an issues log to identify document matters over which the parties were in agreement or at impasse. The reference numbers following each issue correspond to the number assigned to the issue in the issues log. For example, WA-1C-3 refers to Washington collocation issue number 3. The final version of the log has been admitted as Exhibit 279.

61 After the parties filed updated SGAT sections 4 and 8 and their briefs on collocation impasse issues, they resolved several more collocation issues. In a letter dated March 8, 2001, Qwest represented that the parties had resolved issues regarding provisioning intervals, and had revised SGAT sections 8.2.1.10, 8.2.1.12, 8.2.3.7, 8.4.1.7, 8.4.2, 8.4.7, and 8.5.3.1 and to reflect their agreements.

62 Qwest also added a new section 8.4.1.8 to the SGAT to set forth a right-of-first-refusal option pertaining to space reservations.

1. New Collocation Products/Implementation. (Issue WA-1C-1)

Qwest's Position

63 Although Qwest argues that CLECs have the right to place equipment at its facilities at any technically feasible location, Qwest contends that there must be a mutual understanding of the terms and conditions under which such collocation is provided. Where a new collocation arrangement is not already covered by its SGAT or an interconnection agreement, Qwest proposes to include the terms, conditions, and prices associated with that arrangement in its SGAT at the time it makes the arrangement available. A CLEC may then order the service without having to amend its interconnection agreement. If a CLEC does not wish to accept this standard offer,

Qwest contends that the appropriate and necessary course is for the CLEC to pursue its request through negotiation and, if necessary, arbitration. *Qwest Brief, at 5-6.*

Joint Intervenors' Position

64 AT&T and WorldCom (the Joint Intervenors) contend that Qwest refuses to offer new collocation arrangements until the CLEC has amended its interconnection agreement to include that new arrangement. The necessary amendments are subjected to a lengthy process that unreasonably delays their use of the new arrangements. The Joint Intervenors contend that Qwest should be required to immediately offer new types of collocation under the terms and conditions already set forth in the SGAT.

65 In addition, the Joint Intervenors contend that Qwest applies written policies and performance requirements that are inconsistent with its interconnection agreements and the SGAT. *Joint Intervenors Brief, at 14-15.*

Discussion and Decision

66 Qwest has offered to make available new collocation arrangements as soon as they are offered through the SGAT, without requiring an amendment to a CLEC's interconnection agreement. On its face, this offer appears to provide the CLECs their desired immediate access to new arrangements. The CLECs raise a valid concern that the tradeoff for quick access is that it would be on terms and conditions dictated by Qwest. Relief through negotiation and arbitration is often neither quick nor easy.

67 However, it is not a reasonable solution to require that any new collocation arrangement be offered "under terms and conditions already set forth in the SGAT." *Joint Intervenors Brief, at 15.* Even within the eight types of collocation already in the SGAT, there are some terms and conditions that are specific to certain arrangements. There is no reason to expect the existing terms and conditions will apply neatly to every new arrangement.

68 Regarding the use of written policies and performance requirements, the Joint Intervenors rightly contend that any such document must be consistent with interconnection agreements and the SGAT. The SGAT makes no reference to any requirement that the CLEC agree to policies or performance requirements. Qwest's practice of requiring CLECs to sign such documents is inconsistent with the SGAT. Qwest cannot be found in compliance with Checklist Item 1 concerning collocation until it demonstrates that its collocation policies and performance requirements conform to its interconnection agreements and the SGAT.

2. *Shared Cageless Collocation.* (Issues WA-1C-3, 10, 11, 63)

Covad's Position

69 Covad objects to SGAT section 8.1.1.4, which permits shared caged physical collocation, but does not include shared cageless collocation as a permissible type of collocation. *Covad Brief*, at 4. Covad argues that 47 C.F.R. §51.323(k)(2) requires LECs to allow competitors to collocate in any unused space in the incumbent LEC's premises, without requiring the construction of a cage. Covad asserts that the language in 47 C.F.R. §51.323(k)(1), which requires LECs to offer shared collocation cages and cageless collocation, does not relieve Qwest of the obligation to offer shared cageless collocation. *Id.* Covad claims that Qwest has misinterpreted the two sections.

70 Covad argues that Qwest has not demonstrated that shared cageless collocation is not technically feasible. *Id.* Covad proposed that the cageless space owner could handle billing matters for other virtually collocated CLECs, thus solving billing problems claimed by Qwest. *Id.* Covad offered this solution in the context of "plug and play" collocation of line cards at Qwest DSLAMs, which it agreed would be addressed in more detail at the workshop in which emerging services are discussed. *Tr.* at 2304.

71 Covad also objected to the definition of shared collocation in the SGAT being limited to physical collocation, stating that until Qwest could show that virtual shared collocation was not feasible, Qwest was required to provide it. *Covad Brief*, at 5.

Qwest's Position

72 Qwest asserts that its SGAT mirrors and complies with the FCC's requirements under 47 C.F.R. §51.323(k)(1). *Qwest Brief*, at 8. Qwest states that the provision of shared caged collocation is only available to new entrants, and that the FCC only referred to cageless collocation as an alternative arrangement without requiring it to be offered on a shared basis. Qwest also asserts that its only duty is to provide shared physical collocation in a caged arrangement. *Id.*

73 Qwest argues that it cannot offer the type of shared collocation sought by Covad under its current billing system, stating that it would have to transform its system in order to allow a different CLEC to process such orders. *Id.* at 9. Qwest asserts that this is not a collocation issue at all, but characterizes it as sharing of data-type equipment. *Tr.* at 2308-9.

Discussion and Decision

74 The Commission agrees with Qwest's interpretation that the FCC does not require shared cageless collocation. The Commission reads the FCC's *Local Competition*

First Report and Order to say that the FCC's primary concern was to allow alternative collocation methods that would allow collocation space to be used efficiently and for collocation arrangements to be provisioned timely.¹⁴ The FCC encouraged sharing of cages as a way to efficiently use collocation space that otherwise might be wasted. Similarly, the FCC encourages cageless collocation. A plain reading of the order indicates that the FCC intended these to be stand-alone alternatives to then-existing collocation options, despite the ambiguous wording ("shared cage and cageless collocation arrangements") found in other FCC orders. However, it is also obvious from reading Section 51.323(k)(1) appended to the FCC's order that the FCC had no intention of limiting shared caged collocation to "new entrants," as asserted by Qwest. The Commission notes that shared collocation cages are only required as part of an incumbent LEC's physical collocation offering, and agrees with Qwest that it is not required to offer shared caged virtual collocation.

75 At the workshops, it became apparent that Covad's concern is to be able to collocate in increments smaller than a single bay, as allowed in FCC rules. *Tr. at 2302-3*. This raises the question of whether shared cageless space would be an issue if cageless collocation were offered for spaces smaller than a single bay.

76 In previously approved interconnection agreements in Washington, the Commission has not allowed collocation in increments smaller than a single bay. Nor has the FCC required it.¹⁵ 47 C.F.R. §41.323(k)(1). The issue raised by Covad regarding the ability to collocate a card at the DSLAM, rather than being required to collocate an entire DSLAM, will be discussed further at a subsequent workshop addressing emerging services. *Covad Brief, at 6*. Qwest agrees that this issue will be discussed further in the context of emerging services. *Tr. at 2308-9*. The Commission will not require a change to the SGAT at this time to require collocation to be allowed in increments smaller than a bay or rack, but will consider the issue in the context of emerging services, and will require amendment to the SGAT at that time if it deems it necessary.

¹⁴ *Advanced Service First Report and Order*, ¶¶ 37-41. "In the *Advanced Services Order and NPRM*, we tentatively concluded that we should require incumbent LECs to offer collocation arrangements to new entrants that minimize the space needed by each competing provider in order to promote the deployment of advanced services to all Americans. Such alternative collocation arrangements include: (1) the use of shared collocation cages...;(2) the option to request collocation cages of any size without any minimum requirement, so that competing providers will not use any more space than is reasonably necessary for their needs; and (3) physical collocation that does not require the use of collocation cages ("cageless" collocation)."

¹⁵ However, the Commission notes a recently upheld decision in a Pennsylvania arbitration in which the collocation of line cards in digital loop carriers was approved. See, Pennsylvania Public Utility Commission Docket No. A310696F0002, *Petition of Covad Communications Company for an Arbitration Award Against Bell-Atlantic-Pennsylvania, Inc., Implementing the Line Sharing Unbundled Network Element*, A-310698F0002 *Petition of Rhythms Links, Inc., for an Expedited Arbitration Award Implementing Line Sharing* entered November 15, 2000. See also, Recommended Decision of Administrative Law Judge Gesoff, issued June 30, 2000.

3. Restrictions on Remote Collocation (Issue WA-1C-5)

Joint Intervenors' and Covad's Positions

77 The Joint Intervenors and Covad object to SGAT sections 8.1.1.8 and 8.2.7 which state that "remote collocation allows CLEC to physically collocate in Qwest Remote premises." *Ex. 273 at 12, 31*. The parties maintain that remote collocation should not be limited to physical collocation but should allow virtual collocation as well. *Joint Intervenors' Brief, at 6-10; Covad Brief, at 5-7*.

Qwest's Position

78 Qwest maintains that it provides remote collocation pursuant to the Act. *Qwest Brief, at 18*. Qwest asserts that there is no distinction between the equipment that can be collocated physically and that which could be collocated virtually, and that there is no need for Qwest to offer virtual collocation in these circumstances. *Id. at 19-20*.

Discussion and Decision

79 SGAT sections 8.1.1.8 and 8.2.7, which define remote collocation, appear to be in conflict with section 8.1.1.1, which defines virtual collocation. SGAT section 8.1.1.1 does not restrict virtual collocation to non-remote premises. Qwest has not made a showing that virtual remote collocation is not technically feasible. In fact, Qwest has stated that there is no technical difference in some cases between physical and virtual collocation at a remote facility. *Tr. at 2306-7; Qwest Brief, at 20*. Therefore, Qwest must amend SGAT sections 8.2.7 and 8.1.1.8 to remove the word "physically" and must amend any other SGAT sections that restrict or imply restrictions on remote collocation to physical arrangements only.

4. Access to CLEC Collocation Facilities (Issue WA-1C-7)

Covad's Position

80 Covad asserts that Qwest had not fulfilled the FCC's requirements to provide twenty-four hour, seven day a week access to CLEC collocation arrangements. *Covad Brief, at 7-8*. Covad recommends that Qwest amend SGAT section 8.1.1.8 to include procedures to allow such access. At the workshops, Covad's witness stated that the problem may or may not be an SGAT issue. *Tr. at 1919*.

Qwest's Position

- 81 In the workshops, Qwest agreed to look into the situations described by Covad and report back. *Tr. at 1918-20*. Qwest did not address this issue in follow-up workshop sessions or in its brief.

Commission Discussion and Decision

- 82 This issue relates to Qwest's performance in complying with existing FCC rules. There appears to be no PID or performance measure associated with compliance with this requirement. Qwest is placed on notice that documentation of noncompliance with the FCC requirements for access will jeopardize its application for 271 approval. The Commission will defer ruling on this issue until it considers the evidence presented in relation to post-271 performance assurance issues.

*5. Whether Access to the Network Interface Device is Collocation (Issue WA-1C-9)**Joint Intervenor's Position*

- 83 The Joint Intervenor asserts that connections between a CLEC Network Interface Device (NID) and a Qwest NID does not constitute collocation, and should not be subject to collocation intervals. *Joint Intervenor's Brief, at 10-13*. This situation arises in Multi-Tenant Environments (MTEs) or Multiple Dwelling Units (MDUs). *Id.* The Joint Intervenor quotes the FCC's *UNE Remand Order*,¹⁶ to support their argument that the NID is a separate UNE, not part of the loop, and that Qwest must allow connections to its NID as called for by the requirement to connect at any technically feasible point. *Id.* The Joint Intervenor further asserts that their technicians can install the CLEC NID and make these connections in far less time than Qwest would require using collocation procedures. The Joint Intervenor proposes an additional MTE section in Qwest's SGAT, section 8.1.1.8.1, to clarify that connections to access sub-loops would not be classified as collocation. *Id.*

Qwest's Position

- 84 Qwest appears to allow CLECs to locate their equipment in remote terminals. *Qwest Brief, at 18-20*. Qwest will permit CLECs to locate their equipment adjacent to Qwest's, since Qwest realizes that space in such situations is limited, and separate space for CLECs would not be possible, in most instances. *Id.*

¹⁶ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, 15 FCC Rcd 3696, 3704, (*UNE Remand Order*). Rcd. ¶¶ 230, 233.

Discussion and Decision

85 Qwest's position is based on 47 C.F.R. §51.319(a)(2), which states, "The subloop network element is defined as any portion of the loop that is technically feasible to access at terminals in the incumbent LEC's outside plant, including inside wire. . . .Such points may include. . .the network interface device." Qwest further relies on the FCC rule in 47 C.F.R. §51.319(a)(2)(D), which provides that "Access to the subloop is subject to the Commission's collocation rules." However, Qwest goes too far in saying that this rule implies that any access to a subloop must occur through collocation. A more reasonable reading of the rule is that a CLEC wishing to gain subloop access through collocation must comply with collocation rules to do so. Moreover, the subsequent FCC rules, 47 C.F.R. §51.319 (a)(2)(E), refers to MTEs and MDUs as a special case:

The incumbent LEC shall provide a single point of interconnection at multi-unit premises that is suitable for use by multiple carriers. This obligation is in addition to the incumbent LEC's obligation to provide nondiscriminatory access to subloops at any technically feasible point. If parties are unable to negotiate terms and conditions regarding a single point of interconnection, issues in dispute, including compensation of the incumbent LEC under forward-looking pricing principles, shall be resolved under the dispute resolution processes in section 252 of the Act.

86 In addition, 47 C.F.R. §51.319 (a)(2)(A) states in part: "Carriers may access the inside wire subloop at any technically feasible point including, but not limited to, the network interface device, the minimum point of entry, the single point of interconnection, the pedestal, or the pole."

87 Given the FCC's orders and rules on the issue, Qwest must allow cross-connection at Multi-Tenant Environments and Multiple Dwelling Units and may not require collocation for such access. Obviously, the parties must cooperate to make these transitions of service, due to the limited space in some premises. Since the space in MTE and MDU situations in which Qwest terminals and CLEC terminals will be placed, is owned by the customer, and the CLEC is allowed to make connections directly to inside wiring, whether customer-owned or Qwest-owned, Qwest must add the language proposed by AT&T to section 8.1.1.8.1 of the SGAT.

*6. Regeneration Costs (Issues WA-1C-31 and 44)**Joint Intervenors' Position*

88 SGAT section 8.2.1.23.1.4 provides that the CLEC is responsible for the design of services provided within a Qwest central office, and that regeneration may be

necessary in some arrangements. Section 8.3.1.9 specifies that there will be a charge for regeneration, when it is required.

- 89 The Joint Intervenor object to Qwest assessing a charge for regeneration, arguing that the CLECs have no control as to the location of their equipment. The Joint Intervenor claim that collocation rates must be based on forward-looking costs developed using a least-cost configuration. *Joint Intervenor's Brief*, at 27.

Covad's Position

- 90 Covad asserts that channel regeneration charges should only be charged when the CLEC makes a conscious design decision that requires them. *See Ex. 395*, at 17-18; *Covad Brief*, at 9-11. The CLEC should not be penalized by having to provide regeneration in instances where non-adjacent collocation, or other limitations caused by Qwest, make such equipment necessary. *Id.* Covad argues that the FCC's *Second Report and Order* in CC Docket No. 93-162 requires a "LEC to provide the repeaters needed to comply with the ANSI standard without imposing any additional costs on the interconnectors."¹⁷ *Id.*

Qwest's Response

- 91 Qwest claims that it makes every effort to locate CLEC equipment so that regeneration is not required. *Qwest Brief*, at 16-18. Qwest asserts that the Eighth Circuit in *Iowa Utilities Bd. v. FCC* upheld the FCC's collocation rules, and that Qwest is entitled under the Act to recoup the costs involved in providing interconnection and unbundled access from the competing carriers making these requests.¹⁸

Discussion and Decision

- 92 The *Second Report and Order* makes it clear that the FCC expects that cross-connection between LECs and CLECs should be provided so that regeneration is not required.¹⁹ The FCC ordered that all LECs providing physical collocation file tariff revisions reflecting cross-connection rates that excludes the cost of repeaters. *Id.* Thus, the Commission finds the *Second Report and Order* conclusive that Qwest

¹⁷ *In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, Second Report and Order, CC Docket No. 93-162, FCC 97-208, Rel. June 13, 1997.

¹⁸ 120 F.3d 753, 818 (Eighth Circuit 1997), affirmed in part and reversed in part sub. nom. *AT&T Corp v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999).

¹⁹ Second Report and Order, ¶¶ 104-120.

must furnish any regeneration required in cross-connection between LECs and CLECs.

7. Space Reservation Policies (Issue WA-1C-56)

Joint Intervenor's Position

93 The Joint Intervenor's oppose SGAT section 8.4.1.7.4, which requires that CLECs forfeit their space reservation fee upon cancellation of the reservation. *Joint Intervenor's Brief*, at 28. The Joint Intervenor's assert that Qwest's policy violates the FCC's rules prohibiting incumbent LECs from reserving space for themselves on more favorable terms than those applied to CLECs. *Id.* at 28-29.

94 Although the amount of the space reservation fee does not appear to be at issue in the Multi-State 271 Workshop, AT&T witness Mr. Wilson suggested a fee \$2,000 by order of magnitude would be \$2,000. *Ex. 516, Jan. 17, 2001, Tr. at 282*. Mr. Wilson described the fee as one to maintain a list of CLECs in wire centers that have the right of first refusal, and contrasted this with Qwest's Washington proposal to collect a 25 percent space reservation fee where a "typical collocation is \$100,000." *Tr. at 2180*.

Joint CLECs' Position

95 XO Washington, ELI, and ATG (Joint CLECs) oppose Qwest's forfeiture provision as discriminatory, and demonstrate this through a comparison of SGAT sections 8.4.1.7.4 and 8.2.1.16. *Joint CLEC Brief*, at 3-5. They assert that Qwest's proposal for space reservation is a pre-application process rather than a reservation process, and imposes higher costs on CLECs than Qwest would incur were it to reserve space for itself. *Id.* at 3-4. The Joint CLECs state that they proposed a space reservation policy that would require the payment of Qwest's administrative costs plus floor space rental for the reserved space, and would be subject to a first-right-of-refusal provision if collocation space is exhausted in the office where space has been reserved. *Id.* at 4-5. Qwest has rejected the proposal.

Qwest's Position

96 In defense of its position, Qwest explains that "if [the CLEC has] 150 locations they want to go into, instead of having to dump all 150 locations on us to find out if there's space in these offices and to have those time frames, this allows them to reserve specific offices, stage it across a year that they can actually implement this in a way that makes more sense." *Tr. 2182*. Qwest sees the process as an indication that the CLEC is going to make a decision at some point as to whether or not to go forward with an application for collocation; it is not viewed as an option on space. *Id.*

97 Under Qwest's proposal, a space reservation request will result in Qwest reserving the space, but Qwest will not build until receiving a collocation application. Qwest will construct or place some common infrastructure such as power in advance of the job. Qwest may also consider structural issues including entrance facility potentials, but will not build specific equipment for the specific co-carrier in advance. Common infrastructure is generally the type for which the cost would be shared by Qwest and collocators that benefit. While Qwest will not install power wiring specific to the reserved space, Qwest may install some tie cables from the COSMIC frame to the ICDF, but not for CLEC associated cable. *Tr. at 2206*. It is uncertain whether those cables could become stranded or if they are fungible and could be used to serve another co-carrier or Qwest purpose. *Tr. at 2207*.

98 Qwest has made extensive changes to its SGAT to accommodate CLEC concerns regarding space reservations. *Qwest Brief, at 21*. Qwest has reduced the reservation fee from 50 percent to 25 percent of the construction costs for the collocation space, and developed a right-of-first-refusal policy in new SGAT section 8.4.1.8. *Id.* Qwest argues that by not refunding all of the money paid toward space reservation, Qwest avoids disingenuous use by CLECs of the reservation option to warehouse space. *Id. at 22*. Qwest contends that the cancellation fee proposed by the CLECs is a nominal disincentive which is not sufficient to ensure that the reservation process remains competitive. *Id. at 24*.

99 The proposed SGAT provision allows for space reservations for transmission equipment (ATM, DSLAM, packet switching) for up to one year, three years for circuit switching, and five years for power. If the reservation is cancelled within 90 days, Qwest would refund 75 percent of the fee, cancellation between 91 and 180 days would provide for a 50 percent refund, 25 percent would be refunded upon cancellation between 181 days and 270 days, and after that no refund would be applicable.

100 Qwest maintains that its proposal provides parity because, when it reserves space for itself, it creates an internal job order which initiates the commitment of Qwest resources. Qwest says the resources it commits are "on a scale reasonably commensurate" with the 25 percent deposit that the CLECs would lose in a space forfeiture situation. *Id. at n.62*.

Discussion and Decision

101 Subsequent to the workshops and filing of briefs, Qwest submitted a document containing changes to the SGAT agreed upon by the parties. The remaining issues to be resolved are the amount of the space reservation fee, and forfeiture of the fee upon cancellation.

- 102 The FCC has previously recognized this Commission and held it forth as an example for other states to follow in adopting arbitration awards concerning the terms of space reservation in Docket No. UT-960323.²⁰ In the same paragraph, the FCC noted that California has adopted the policy that “Any entity, including Pacific Bell, which wants to reserve space shall provide Pacific [Bell] with a \$2,000 nonrefundable deposit. In the case of CLECs or other non-affiliated companies, the \$2,000 shall be applied against the collocation construction fee. Any entity, including Pacific Bell, which does not use the reserved space within the twelve month time-frame will forfeit its deposit. Such forfeitures shall be applied against the collocation.”²¹
- 103 The California policy seems to fit best with the situation here, imposing a necessary balance of the burdens on each of the parties. The burdens must be balanced to provide competitors with a meaningful opportunity to compete as well as to satisfy FCC rules and requirements under the Act. Under 47 C.F.R. §51.323(f)(4), the incumbent must reserve space to itself under terms that are at parity with its competitors. However, we agree with Qwest that by virtue of having constructed the space in the first place, it has already made a commitment of its own. Therefore, requiring competitors to provide a space reservation fee of \$2,000, as in California, does not appear to place competitors at a comparative disadvantage with Qwest, and provides a disincentive against warehousing space. Qwest shall revise the SGAT at 8.4.1.7.4 to change the collocation space reservation fee from 25 percent to \$2,000, change the language at 8.4.1.7.4 to reflect that the deposit is non-refundable, and change the SGAT, if necessary, to state that the fee is applied against the collocation construction fee. The SGAT shall clarify that failure to use the reserved space within the technology-specific reservation periods specified at 8.4.1.7 in the SGAT shall result in forfeiture of the \$2,000. SGAT sections 8.4.1.7.4(a-d) shall be deleted.
- 104 This decision is intended to enable fair competition and is consistent with several other factors. FCC rules require Qwest to make collocation space available on a first-come, first-served basis.²² Qwest does not have to build more space when available space is exhausted.²³ Qwest must take into account projected collocation demand when planning renovations of existing facilities or constructing or leasing new facilities,²⁴ and must relinquish any space held for future use before denying a request

²⁰ *Collocation Order on Reconsideration*, at ¶ 51 (Rel. Aug. 10, 2000) (“We strongly urge the state commissions to adopt space reservation policies similar to the state policies described”).

²¹ *Rulemaking on the Commission’s Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Networks*, Decision 98-12-069, 1998 WL 995609, at 68-69 (Ca. PUC 1998).

²² 47 C.F.R. §51.323(f)(1).

²³ *Id.*

²⁴ 47 C.F.R. §51.323(f)(3).

for virtual collocation on the grounds of space limitations unless Qwest proves to the Commission that virtual collocation at any point is not technically feasible.²⁵ Furthermore, Qwest may impose reasonable restrictions on the warehousing of unused space by collocating carriers provided that Qwest may not set maximum space limits without first proving to the Commission that restrictions are necessary.²⁶ In the *Bell Atlantic New York Order*, the FCC also set forth the standard that the first collocater does not have to pay all space preparation and related up-front costs, rather these costs should be prorated among collocators and recovered through TELRIC-based recurring charges.²⁷

8. Ordering and Provisioning Intervals (Issues WA-1C-59, 60a, 61, 62, 64) and Order Volume Limitations (Issue WA-1C-57)

Qwest's Position

105 Through its brief and its subsequent letter of March 8, 2000, regarding settled SGAT issues, Qwest reports that the parties have reached agreement on all interval provisioning issues as contained in Qwest's SGAT except for the need for additional time to provision collocation where a high volume of applications is received in a short time period. *Qwest Brief*, at 24.²⁸

Joint Intervenors' Position

106 Joint Intervenors argue that the numerous exceptions Qwest has created to collocation provisioning intervals create barriers to the CLECs' right to timely collocation under the Act. The Joint Intervenors argue that Qwest seeks to limit customer demand for collocation to ensure that it meets its ROC performance measurement targets. *Joint Intervenors' Brief*, at 17. The Joint Intervenors argue that Qwest has taken an overly broad reading of the FCC's *Collocation Order on Reconsideration* by not recognizing that it is both the number and *complexity* of the applications that should permit a limitation on how many collocation orders can be placed in a given time frame. Qwest has not demonstrated that the orders it receives are in fact complex. *Joint Intervenors Brief*, at 18. The Joint Intervenors argue that the reasonable remedy would be to delete section 8.4.1.9 from the SGAT.

²⁵ 47 C.F.R. §51.323(f)(5).

²⁶ 47 C.F.R. §51.323(f)(6).

²⁷ *Bell Atlantic New York Order*, ¶80.

²⁸ This issue is contained in Qwest's SGAT section 8.4.1.8. Subsequent to the filing of that SGAT version, the parties re-numbered that section as 8.4.1.9. (Ex. 273).

Covad's Position

107 Covad contends that Qwest may not limit the number of collocation requests by a CLEC. Covad asserts that allowing Qwest to unilaterally adopt a standard is discriminatory and that the anecdotal evidence provided by Qwest fails to support Qwest's commitment that it should accept no more than five applications from CLECs per week per state depending on the volume of applications pending from other CLECs. *Covad Brief, at 15.*

Joint CLECs' Position

108 The Joint CLECs object to Qwest's proposal to limit the number of collocation applications to a maximum of five orders per week. They argue that the Commission's collocation order (WAC 480-120-560) establishes the intervals for order processing and provisioning. The Order does not provide for the weekly application limit as suggested by Qwest. The Joint CLECs further argue that the forecasting process is designed to provide Qwest with ample ability to respond to collocation requests. *Joint CLEC Brief, at 5.* Finally, the Joint CLECs argue that limiting weekly orders from a single firm does not really address Qwest's stated concern regarding being faced with too many orders needing to be processed in any given time period. The Joint CLECs argue that there is little difference between 10 orders being placed by two companies in one week and 10 orders being received from one company in one week. *Joint CLECs Brief at 6.* As a remedy, the Joint CLECs propose deleting Section 8.4.1.8²⁹ from the SGAT.

Qwest's Position

109 Qwest asserts that it may limit the number of weekly applications that it receives from a single firm. Qwest argues that such a limitation is provided for in FCC rule and was approved by the FCC in Southwest Bell's Section 271 Texas application. *Qwest Brief, at 31.*

Discussion and Decision

110 The issue is whether Qwest should be able to limit the number of collocation applications from a given CLEC to five per week. From a practical point of view, it makes little sense to allow Qwest to impose a standard limitation of five collocation applications per week from any individual CLEC. The determination for processing an order application should reflect the complexity of the order as well as the volume of applications, as recognized by the FCC's *Collocation Order on Reconsideration*. Routine orders that require a minimum of review should not be held up, simply

²⁹ Renumbered as 8.4.1.9.

because the CLEC has requested Qwest to process more than five applications in a given week.

111 If an order is significantly complex, Qwest should be able to establish a mutually agreeable timeframe for processing the order. For example, when the application requires significant engineering review due to a need for significant new facilities (particularly when these are not part of a CLEC forecast) allowing individually negotiated intervals seems appropriate. Qwest has also demonstrated that there is significant variability in the number of applications it receives in a given week, although it has not demonstrated whether those applications are complex or routine or are driven by an excessive number of applications coming from a single CLEC. (*Tr. at 2211-12*).

112 Qwest has offered new SGAT language in both Washington and Arizona that appears to be more reasonable and agreeable to the parties. Section 8.4.1.9 states, "The interval for Virtual Collocation (Section 8.4.2) Physical Collocation (Section 8.4.3) and ICDF Collocation (Section 8.4.4) apply to a maximum of five (5) Collocation Applications per CLEC per week per state. If six (6) or more Collocation orders are submitted by a CLEC in a one-week period in the state, intervals shall be individually negotiated. Qwest shall however accept more than five (5) Applications from CLEC per week, per state, depending on the volume of Applications pending from other CLECs."

113 Qwest's proposed language is reasonable.

9. Forecasts (Issue WA-1C-52)

Joint Intervenors' Position

114 The Joint Intervenors object to the scope of forecasts described in SGAT section 8.4.1.4. They characterize the forecast as a "pre-application" and assert that it requests much of the same detailed information asked for in a collocation application. *Joint Intervenors Brief, at 21-22.*

Qwest Position

115 Qwest addressed the forecasting issue only as it affects provisioning intervals, and did not address the content of the forecasts it requires from CLECs.

Discussion and Decision

116 At the workshops, the CLECs objected to the language in SGAT section 8.4.1.4, which requires inclusion in forecasts of eight items identical to those required in a subsequent application. *Ex. 295, at 37-38.* Qwest's revised SGAT section 8.4.1.4.

contains significant modifications to the forecasting requirements, making the inclusion of two items optional, requiring less specificity for another item, and deleting two others. *Ex. 273, at 41.* Further amendments have added accuracy criteria and restrictions on use of forecasts. *Id.* The changes Qwest has made to its forecasting requirements appear to address the CLECs' concerns raised during the workshops, and reduce the scope of information required in forecasts. Therefore, the Commission will not require further modifications to the SGAT sections addressing the content of collocation forecasts.

10. Microwave Collocation

Teligent's Position

117 Teligent notes that paragraph 379 of the *Thirteenth Supplemental Order* in Docket No. UT-003013,³⁰ directs Qwest to file standardized microwave collocation tariffs. Teligent observes that SGAT section 8.2.4.1 requires requests for microwave collocation to be made through a Bona Fide Request (BFR) process. Teligent requests that the Commission take into account its decision in Docket No. UT-003013 in its rulings regarding collocation in this proceeding.

Qwest's Position

118 Qwest did not address this issue in brief.

Discussion and Decision

119 The Commission's *Thirteenth Supplemental Order* in Docket No. UT-003013 states in part:

The Commission . . . directs Qwest and Verizon to file standardized microwave collocation tariffs to be considered in Part B of these proceedings.

Id. at ¶ 377.

120 In view of the Commission's decision in Docket No. UT-003013, Qwest must modify SGAT section 8.2.4.1 to provide standardized offerings for microwave collocation that conform to the tariffs it files in compliance with the *Thirteenth Supplemental Order* in Docket No. UT-003013.

³⁰ *In the Matter of the Continued Costing and pricing of Unbundled Network Elements, Transport, and Termination*, Docket Not UT-003013, Thirteenth Supplemental Order; Part A Order Determining Prices for Line Sharing, Operations Support Systems and Collocation, Docket No. UT-003013 (January 31, 2001).

Verification of Compliance

- 121 In order to meet the requirements of Checklist Item No. 1 for collocation, Qwest must comply with the Act, FCC rules, and Commission rules concerning collocation. Qwest asserts that it has met the requirements for Checklist Item No. 1 for collocation through its interconnection agreements with CLECs and through SGAT section 8. However, a review of the SGAT sections over which the parties are at impasse indicates that Qwest has not met the requirements for this checklist item. Qwest must modify its SGAT and other documents consistent with the determinations made above in this order. In particular, Qwest must conform its written policies and performance requirements to the terms and conditions approved by the Commission. It must offer virtual remote collocation. It must provide channel regeneration at no additional charge to CLECs. It must not define connections to its network interface devices in MTEs or MDUs as collocation. It must charge a space reservation fee of \$2,000 that is nonrefundable in the case of forfeiture of the space reservation. Finally, Qwest must not limit the number of collocation applications received per week from a CLEC. Finally, Qwest must provide a standardized offering for microwave collocation.
- 122 Notwithstanding any modifications to the SGAT, Qwest must also demonstrate through commercial experience and a review of the audited results of relevant performance measures that it is providing collocation pursuant to the requirements of Section 271(c)(2)(B)(i). Performance data is not yet available from the ROC third party testing process to determine if Qwest is meeting its own standards for providing collocation. Until the Commission reviews and evaluates the audited performance data, the Commission cannot yet verify whether Qwest has met the requirements of this checklist item.

FINDINGS OF FACT

- 123 Having discussed above in detail the oral and documentary evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues at impasse between the parties and the reasons and bases therefore, the Commission now makes and enters the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings stated below are incorporated into the ultimate findings by reference.
- 124 (1) Qwest Corporation, formerly U S WEST Communications, Inc., is a Bell operating company (BOC) within the definition of 47 U.S.C. §153(4), providing local exchange telecommunications service to the public for compensation within the state of Washington.
- 125 (2) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates and conditions of service of

telecommunications companies within the state, to verify the compliance of Qwest with the requirements of Section 271(c) of the Telecommunications Act of 1996, and to review Qwest's Statement of Generally Available Terms, or SGAT, under Section 252(f)(2) of the Act.

- 126 (3) Section 271 of the Act contains the general terms and conditions for BOC entry
into the interLATA market.
- 127 (4) Pursuant to 47 U.S.C. §271(d)(2)(B), before making any determination under
this section, the FCC is required to consult with the State commission of any
State that is the subject of a BOC's application under Section 271 in order to
verify the compliance of the BOC with the requirements of Section 271(c).
- 128 (5) Pursuant to 47 U.S.C. §252(f)(2), BOCs must submit any statement of terms and
conditions that the company offers within the state to the State Commission for
review and approval.
- 129 (6) During the second workshop in this proceeding held on November 6-8, and 10,
2000, November 28 and 29, 2000, and January 3-5, 2001, Qwest and a number
of CLECs submitted testimony and exhibits to assist the Commission in
evaluating Qwest's compliance with the requirements of Section 271(c)(B)(2)(i)
of the Act concerning collocation issues, as well as the review of Qwest's SGAT
pursuant to Section 252(f).
- 130 (7) Qwest's SGAT does not include policies or performance requirements for new
collocation arrangements.
- 131 (8) Qwest's practice of requiring CLECs to agree to policies and performance
requirements before making available to CLECs a new collocation arrangement
is inconsistent with the SGAT, which makes no reference to CLECs agreeing to
such policies and requirements.
- 132 (9) SGAT section 8.1.1.4 allows CLECs to share caged physical collocation, but
does not allow shared cageless or caged virtual collocation.
- 133 (10) SGAT sections 8.1.1.8 and 8.2.7 limit remote collocation to physical collocation
arrangements. However, section 8.1.1.1 does not limit virtual collocation to
non-remote premises.
- 134 (11) SGAT section 8.2.1.18 provides for access to CLEC collocation arrangements
on a 24 hour per day, seven day a week basis. However, evidence on the record
indicates that Qwest's practices may impede such access in some circumstances.

- 135 (12) The ROC has not established a performance measure to test existing FCC rules
on access to collocation arrangements.
- 136 (13) SGAT section 8.3.1.9 provides that Qwest will charge CLECs for regeneration
where it is required in designing collocation space within a Qwest central office.
- 137 (14) SGAT section 8.4.1.7.4 requires CLECs to forfeit their space reservation fee
upon cancellation of the reservation, and SGAT section 8.2.1.16 imposes a
reservation fee of 25 percent of the construction costs for collocation space.
- 138 (15) The FCC has recognized with approval the space reservation policies adopted by
this Commission and the California Public Utilities Commission. The
California Commission has approved a policy allowing for a \$2000 non-
refundable deposit and forfeiture in the event a CLEC does not use reserved
space within a 12-month period.
- 139 (16) SGAT section 8.4.1.9 limits the number of collocation requests from an
individual CLEC to a maximum of five orders per week, but allows certain
exceptions.
- 140 (17) Qwest's revised SGAT section 8.4.1.4 modifies the forecast requirements in
response to CLEC concerns.
- 141 (18) The Commission's *Thirteenth Supplemental Order* in Docket No. UT-003013,
at paragraph 377, requires Qwest to file a standardized microwave collocation
tariff.

CONCLUSIONS OF LAW

- 142 Having discussed above in detail all matters material to our decision, and having
stated general findings and conclusions, the Commission now makes the following
summary conclusions of law. Those portions of the preceding detailed discussion
that state conclusions pertaining to the ultimate decisions of the Commission are
incorporated by this reference.
- 143 (1) The Commission has jurisdiction over the subject matter of this proceeding and
the parties to the proceeding.
- 144 (2) Until Qwest demonstrates that its collocation policies and performance
requirements conform to its interconnection agreements and the SGAT, Qwest is
not in compliance with Checklist Item No. 1 concerning collocation.
- 145 (3) FCC Orders and rules do not require that LECs provide shared cageless or
shared caged virtual collocation.

- 146 (4) Qwest has not demonstrated that virtual remote collocation is not technically
feasible. There appears to be no difference between physical and virtual
collocation at remote facilities.
- 147 (5) The FCC's *Second Report and Order* in CC Docket No. 93-162 provides that
LECs must provide cross-connection to CLECs so that regeneration is not
required, and LECs must furnish any regeneration required in cross-connection
between LECs and CLECs.
- 148 (6) FCC Orders and rules require Qwest to allow cross-connection between CLEC
NIDs and Qwest NIDs in MTE and MDU environments. Connection in such
circumstances is not collocation, and need not be provided pursuant to
collocation rules.
- 149 (7) The space reservation policy adopted by the California Public Utilities
Commission best fits the needs of the parties to this proceeding, balancing the
burdens of each party by allowing competitors a meaningful opportunity to
compete.
- 150 (8) Qwest's proposed language in SGAT section 8.4.1.9 meets the standards set
forth in the FCC's *Collocation Order on Reconsideration* to reflect the
complexity and volume of applications.
- 151 (9) Qwest's proposed changes to SGAT section 8.4.1.4 are reasonable, reducing the
scope of information required in forecasts and addressing CLEC concerns.
- 152 (10) SGAT section 8.2.4.1 is not consistent with paragraph 377 of the Commission's
Thirteenth Supplemental Order in Docket No. UT-003013, concerning
microwave collocation.
- 153 (11) Until Qwest modifies its SGAT provisions concerning collocation as discussed
above, and subject to Commission review and evaluation of the audited results
of the ROC OSS regional testing on performance measures, Qwest is not in
compliance with the requirements of 47 U.S.C. §271(c)(2)(B)(i), Checklist Item
No. 1 concerning collocation, and the Commission will not approve Qwest's
SGAT.

ORDER

- 154 Based upon the findings of fact and conclusions of law set forth above, the
Administrative Law Judge enters the following order:

- 155 (1) In order for the Commission to find Qwest in compliance with 47 U.S.C. §271(c)(2)(B)(i), Checklist Item No. 1 relating to Collocation, and for the Commission to approve Qwest's SGAT, Qwest must:
- (a) ensure that Qwest's written policies and performance requirements for new collocation arrangements are consistent with the SGAT and interconnection agreements;
 - (b) amend SGAT sections 8.1.1.8 and 8.2.7 to remove the word "physically" and amend any other SGAT sections that restrict or imply restrictions on remote collocation only to physical arrangements;
 - (c) amend SGAT sections 8.2.1.23.1.4 and 8.3.1.9 to provide that Qwest is responsible for any regeneration required in providing collocation arrangements;
 - (d) amend SGAT section 8.1.1.8.1 to include language proposed by AT&T allowing cross-connections in MTE and MDU environments directly to inside-wiring, and not pursuant to collocation requirements;
 - (e) amend SGAT section 8.4.1.7.4 to reflect a space reservation fee of \$2000, that the amount is non-refundable and if necessary to provide that the fee is applied against the collocation construction fee, and that failure to use the reserved space in the periods specified in section 8.4.1.7 will result in forfeiture of the \$2000.
 - (f) delete SGAT sections 8.4.1.7.4(a-d);
 - (g) amend SGAT section 8.2.4.1 to provide standardized offerings for microwave collocation that conform to the tariffs that Qwest must file in compliance with paragraph 377 of the *Thirteenth Supplemental Order* in Docket No. 003013.
- 156 (2) At a subsequent workshop concerning emerging services, the parties and the Commission will address whether CLECs may collocate in increments of less than a bay, e.g., collocation of a card in a Qwest DSLAM rather than collocation of an entire DSLAM.
- 157 (3) The Commission will defer until later workshops on Qwest's performance whether Qwest is in compliance with existing FCC rules on access to collocation arrangements.
- 158 (4) Qwest must submit to the Commission the audited results of performance testing relating to Checklist Item No. 1 relating to collocation and associated testimony concerning the audited results as soon as the results are available. The Commission will not find Qwest in compliance with Checklist Item No. 1 until after its review of the results.
- 159 (5) The Commission retains jurisdiction to complete this docket and to implement the terms of this Order.

DATED at Olympia, Washington, and effective this __ day of March, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

12263-0005/919263